

Full Force and Effect
Decision Record

**Determination of NEPA Adequacy
(DNA)**

DOI-BLM-NV-W010-2012-0033-DNA

Humboldt County Community Pit Designations

Introduction

The *Humboldt County Road Department Free Use Permit Renewals, Community Pit Designations, and Expansions* Environmental Assessment (EA) was completed in July of 2009. That EA analyzed the impacts associated with 27 material sites (gravel pits) throughout Humboldt County, 23 of which were designated as “community pits.” With the designation of 23 community pits, public individuals can obtain contracts to remove gravel much quicker and easier than before. Since the completion of the EA, there has been a demand for sales from material sites in Humboldt County that were not analyzed in the EA, but warrant designation as “community pits”. These material sites are: the Donna Schee, Rebel Creek, Section 4, and Valmy pits. One gravel pit, the Orovada Barber pit, was designated as a community pit based on the 2009 EA, but requires expansion to meet the future needs of the public and the Humboldt County Road Department (HCRD). The public uses these pits for maintenance of agricultural pivots/fields and property improvements. The HCRD uses the Orovada Barber pit for the maintenance of county roads. Mining of the material is usually completed using a front-end loader, backhoe, or excavator, and it is typically hauled with belly-bump or end-dump trucks. Mining and removal of material could take place any time of the year. Existing roads would be used to access the pits. The proposed community pits are described below in further detail.

Additionally, as part of the Proposed Action, the stipulations for community pit sales in the Decision Record (DR) for the EA, signed July 16, 2009, were modified to more adequately address community pit sales, while still meeting the intent of the existing stipulations. The stipulations currently attached to community pit sales were primarily developed for the HCRD, and do not accurately reflect the requirements of public individuals. For specific details, refer to the DR. The proposed modifications to the existing stipulations are described in detail on the DNA Form.

Land Use Plan Conformance

The proposed action and alternatives described are in conformance with the Paradise-Denio Management Framework Plan III (MFP), signed July, 1982. The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with objective M-1 which states: “provide to the public the opportunity to acquire minerals from public lands to meet market demands”.

DECISION

Full Force and Effect Authorization

It is my decision to authorize the designation of the new proposed community pits, expansion of the existing community pit, and modification of the stipulations as described in the DNA. All community pit users would sign the stipulations and agree to implement them during operations. The decision to designate new community pits immediately relies upon authority under the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq*), commonly referred to as the Materials Act, and associated BLM regulations under 43 CFR 3600.

This decision is supported by the Humboldt County Community Pit Designations DNA, #DOI-BLM-W010-2012-0033-DNA, which is based upon the *Humboldt County Road Department Free Use Permit Renewals, Community Pit Designations, and Expansions* EA and the July 16, 2009, FONSI. Furthermore, on the basis of the information in the DNA, it is my decision that designation of these community pits and implementation of the revised stipulations, as described in the DNA and in conformance with the existing land use plan, would not have impacts beyond those addressed in the above-referenced EA.

Summary of Actions

This decision designates 4 new community pits, authorizes the expansion of one existing community pit, and modifies the stipulations attached to all community pit sales throughout Humboldt County, Nevada. The specific community pit designations are provided in detail below:

Donna Schee- The Donna Schee Community pit will be located within T37N, R32E, section 17, SESE, and section 20, NENE. This community pit designation will increase the total authorized disturbance area to approximately 13.75 acres. Refer to DNA for specific location and dimensions.

Rebel Creek- The Rebel Creek Community pit will be located within T43N, R37E, section 15, SWNENE, NWSWNW. This community pit designation will increase the total authorized disturbance area to approximately 12 acres. Refer to DNA for specific location and dimensions.

Section 4- The Section 4 Community pit will be located in T42N, R37E, section 4, SWSW. This material site is used by local farmers and ranchers very often because the material is decomposed granite which is useful in a variety of ways. This community pit designation will increase the total authorized disturbance area to approximately 40 acres. Refer to DNA for specific location and dimensions.

Valmy- The Valmy Community pit will be located in T34N, R43E, section 32, SE. This community pit designation will increase the total authorized disturbance area to approximately 70 acres. Refer to DNA for specific location and dimensions.

Orovada Barber- The Orovada Barber Community pit, located in T42N, R37E, section 32, NESE, was designated based on the 2009 EA. The public has continued to use this material site and there is a need to expand the boundary of the pit. The pit boundary previously included all of the NESE of section 32 except for the SWNESE. This decision would designate the SWNESE as well, and therefore, the total authorized disturbance area will be approximately 40 acres. Refer to DNA for specific location and dimensions.

The stipulations have been modified to more adequately address community pit sales, while still meeting the intent of the previous stipulations. The stipulations previously attached to community pit sales were primarily developed for the HCRD, and did not accurately reflect the requirements of public individuals. Refer to the Decision Record (DR) for the EA, signed July 16, 2009, and the DNA form for specific changes. The complete set of the modified stipulations is attached to this Decision.

Rationale (*In accordance with 43 CFR 5003.1 (b)*).

In summary: the BLM has determined that designation of these new community pits will greatly improve the process of disposing of mineral materials, thus allowing staff more time to devote to inspection and enforcement and production verification. This decision will provide community pit users with better customer service, which should reduce the likelihood of trespass. In addition, the following items outline the rationale for the Decision:

- Authority for this decision as it relates to the BLM-managed public lands is contained in the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), commonly referred to as the Materials Act, the Federal Land Policy and Management Act of 1976, as amended, and the Code of Federal Regulations at 43 CFR 3600.
- The Proposed Action is in conformance with the Paradise-Denio Management Framework Plan.
- There was adequate public involvement during the development of the original NEPA document to inform this decision.
- This decision is not expected to result in any unnecessary or undue environmental degradation of public lands and is consistent with federal, state, and local laws, regulations and plans.
- This decision, with implementation of the modified stipulations, will not adversely impact any threatened or endangered species or significant scientific, cultural, or historical resources.
- The Finding of No Significant Impact, dated July 16, 2009, for the *Humboldt County Road Department Free Use Permit Renewals, Community Pit Designations, and Expansions* Environmental Assessment number DOI-BLM-NV-W010-2009-0005-EA, supports this decision.
- Based on the President's National Energy Policy and Executive Order 13212, the proposed action will not generate any adverse energy impacts or limit energy

production and distribution. Therefore, no “Statement of Adverse Energy Impact” is required per WO IM No 2002-053 and NV IM 2002-049.

Authority

The authority for this decision as it relates to the BLM-managed public lands is contained in the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), commonly referred to as the Materials Act, the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the Code of Federal Regulations (CFR) at 43 CFR 3600.

Appeal of the Decision

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Derek Messmer, Field Manager, Humboldt River Field Office, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Attached Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.47I(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted;
and,
- 4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

\S\ Derek Messmer
Derek Messmer
Field Manager
Humboldt River Field Office

9/30/3013
Date

Attachments:
Stipulations
Appeal Form 1842-1

Stipulations
Humboldt County
Community Pit Sales

1. Topsoil must be stockpiled for pit rehabilitation measures.
2. The contract holder must have a copy of the contract readily available while operating for BLM to verify their use of the material.
3. All equipment in pits must have the operators name posted, in a conspicuous place, in order that authorized use can be verified.
4. Any cultural resource discovered by the contract holder, or any person working on their behalf, during the course of activities on federal land will be immediately reported to the BLM by telephone, with written confirmation. The operator will suspend all operations in the immediate area of such discovery and protect it until an evaluation of the discovery can be made by the authorized officer. This evaluation will determine the significance of the discovery and what mitigation measures will be necessary to allow activities to proceed. The contract holder may be responsible for the cost of evaluation and mitigation. Operations may resume only upon written authorization to proceed from the authorized officer.

Additionally, the contract holder, or any person working on their behalf, will not knowingly remove, disturb, alter, or destroy any scientifically important cultural resources such as a historical or archaeological site, structure, building, object or artifact that qualify for listing on the National Register of Historic Places (NRHP) or have not been evaluated for listing on the National Register.

5. On a case-by-case basis, the contract holder will be responsible for controlling all noxious weeds and other undesirable invading plant species in the mining area until reclamation activities have been determined to be successful by the BLM authorized officer. The contract holder will be responsible for contacting the BLM for concurrence with any proposed weed control program prior to application of any chemical treatments for weeds on public lands.
6. The contract holder will strive to conduct their mining activities outside of the migratory bird nesting season which runs from March 1 to August 31. Should they find that they can't avoid activity during that time, they will plan ahead and clear the native vegetation in those areas outside of the nesting season to deter birds from nesting there. Vegetation shall be cleared only in the footprint of the projected disturbance for that contract. Once cleared of vegetation, any material taken from the area shall be within the area devoid of vegetation. The contract holder shall take measures to deter weeds and native vegetation from returning to the disturbed area such as applying a BLM approved herbicide or blading the area again as needed.

Should a need for material arise during the nesting season (March 1st through August 31st) in an area that has not been cleared of vegetation, the contract holder will conduct a careful visual inspection of habitat in the area to be disturbed prior to any surface disturbance. Nesting activities may include eggs or young present in nest and adult behavioral displays (e.g. dive-bombing, faking injury, won't leave the area, agitated calling, etc.). If nesting activities are identified, the BLM biologist must be notified immediately and appropriate protection measures, which may include avoidance or restriction of activities, will be established.

7. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify BLM, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for 30 days or until notified to proceed by the authorized officer.

When previously undiscovered antiquities or other objects of historic or scientific interest including but not limited to historic or prehistoric ruins, vertebrate fossils or artifacts are discovered in the performance of this permit, the item(s) or condition(s) will be left intact and immediately brought to the attention of the authorized officer of the BLM.

8. In the event that previously undiscovered paleontological resources are discovered in the performance of any surface disturbing activities, the item(s) or condition(s) would be left intact and immediately brought to the attention of the authorized officer of the BLM. If significant paleontological resources are found, avoidance, recordation, and/or data recovery would be required.
9. To avoid disturbance of existing power, telephone, and road rights-of-way, there will be no excavation within 40 feet of power poles, telephone poles, pole anchors, or the nearest side of an existing road.
10. Community pit users are hereby made aware of the following Right of Way holders with underground or overhead utilities, and the need to avoid these utilities, at the following locations:

Mineral Material Site Name	Right of Way holder
Quinn River #2 Com. Pit	Harney Electric Cooperative Inc. Commnet Wireless LLC
Denio Community Pit	Harney Electric Cooperative Inc. Oregon-Idaho Utilities Inc. Nevada Department of Transportation
Blue Mountain Com. Pit	Sierra Pacific Power Co. DBA NV Energy
Jungo – 13 Mile Com. Pit	Humboldt County (Road Department) T-Quarter Circle

Mineral Material Site Name	Right of Way holder
Jungo – South Com. Pit	Sprint Communications Company LP Sierra Pacific Power Co. DBA NV Energy
Morey Creek Com. Pit	Nevada Department of Transportation Humboldt National Forest Oregon-Idaho Utilities Inc. Sierra Pacific Power Co.
Rebel Creek Community Pit	Harney Electric Cooperative Inc.

11. All equipment and machinery shall have properly functioning spark arrestors and mufflers. Contract holder is responsible for all suppression costs for any fire resulting from their operation and practices.
12. No toxic materials shall be disposed of at the material site. Contract holder is responsible for disposing of all debris in accordance with state and federal regulations.
13. No stockpiles shall be left after a job is finished, or they are to be flattened out.
14. Between operating periods the pit walls shall be maintained at a slope ratio not steeper than 3h:1v.
15. There shall be no mining, prospecting or testing outside the pit working faces without contacting BLM before any work is done.
16. Reclamation measures shall consist of:
 - a. During operations, the pit walls shall be maintained at a slope ratio not to exceed 3:1, so as to minimize slope failure potential and public safety hazards.
 - b. All rejected oversized material will be stockpiled.

Community Pit contract holder agrees to abide by these Stipulations.

Signature

Date